

CITY OF SAN JOSE, OFFICE OF THE  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
P.C. 5/12/04

File Number  
CP04-023

Application Type  
Conditional Use Permit

Council District  
8

Planning Area  
Alum Rock

Assessor's Parcel Number(s)  
491-10-002; -073, -074

### PROJECT DESCRIPTION

Completed by: John W. Baty

Location: Southeast corner of Cunningham Avenue and Nassau Drive

Gross Acreage: 9.13

Net Acreage: 9.13

Net Density: N/A

Existing Zoning: R-1-8

Existing Use: Church/School

Proposed Zoning: R-1-8 Proposed Use: Church/School three wireless communications antennas and ancillary equipment

### GENERAL PLAN

Completed by: JWB

Land Use/Transportation Diagram Designation  
Public/Quasi-Public

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: JWB

North: High School

R-1-8

East: Single-family residential

R-1-8

South: Single-family residential

R-1-8

West: Single-family residential

R-1-8

### ENVIRONMENTAL STATUS

Completed by: JWB

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: JWB

Annexation Title: Hillview No. 5

Date: 10/15/56

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval  
☐ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date:

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### APPLICANT/DEVELOPER

### OWNER

MetroPCS  
c/o Kersten Rutherford  
1080 Marina Village Parkway  
Alameda, CA 94501

The Roman Catholic Welfare Corporation of San José  
Rev. Francis V. Cilia  
2040 Nassau Drive  
San José, CA 95122

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**PUBLIC AGENCY COMMENTS RECEIVED**

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Completed by: JWB

**Department of Public Works**

None

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**Other Departments and Agencies**

None

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**GENERAL CORRESPONDENCE**

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None

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, MetroPCS, is requesting a Conditional Use Permit to allow three wireless communication antennas at an existing private school on the site of Most Holy Trinity Church. The subject property is located on a 9.1-acre site zoned R-1-8 at the southeast corner of Cunningham Avenue and Nassau Drive. Building-mounted wireless communication antennas are a conditional use in all R-1 Residence zoning districts. Single-family residential uses surround the site to the south, east and west with Overfelt High School to the north across Cunningham Avenue.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from the antennas.

**Project Description**

The subject proposal would allow the installation of a 6-foot tall cylindrical enclosure containing three wireless communication antennas on the roof of an existing multi-purpose building at an existing private school on the site of Most Holy Trinity Church. The proposal also includes roof-top mounted ancillary equipment which occupies about 240 square feet. This proposal does not include an emergency back-up generator.

## **ENVIRONMENTAL REVIEW**

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Section 15303, New Construction or Conversion of Small Structures, consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

This proposed project involves the construction of a new, small wireless communication facility consisting of an antenna enclosure and ancillary equipment within a small enclosure, consistent with the scope of Section 15303. All of the aforementioned equipment is mounted on the roof-top of an existing structure.

## **GENERAL PLAN CONFORMANCE**

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/Quasi-Public in that the addition of building mounted wireless communication antennas to the site does not impair the use of the existing church and public school. The General Plan states that churches and private schools are appropriate uses in the Public/Quasi-Public land use designation.

The proposed use furthers the General Plan Urban Design Policy in that the use of building mounted antennas reduces the need for freestanding monopoles. The proposed building mounted antennas are also sited and concealed within a cylinder to minimize public visibility.

## **ANALYSIS**

The issues relative to this project discussed below are conformance to the: 1) Zoning Ordinance, and 2) City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.

### Conformance to the Zoning Ordinance

The Zoning Ordinance identifies two key issues associated with wireless communication antenna installations in residential zoning districts: 1) The proposed installation must meet the definition of a, “wireless communication antenna, building mounted” and 2) If the installation exceeds the maximum height of the zoning district in which it is located it must meet specific criteria.

The Zoning Ordinance defines building mounted wireless communication antenna as, “antenna and associated mechanical equipment that is used for a wireless communications network and is mounted to an existing structure and no portion of the antenna projects more than six (6) feet above the building or structure parapet...” The proposed installation meets the definition of building mounted as the antennas are mounted to an existing building and do not project more than six (6) feet above the parapet.

The height to the top of the proposed antenna installation is 39-feet 7-inches, which exceeds the 35-foot maximum height of the R-1-8 Residence Zoning District. However, the proposed antenna meets all of the criteria set forth in section 20.80.1900 of the Zoning Code that allows the height of building mounted wireless communication antennas, for buildings that are sixty (60) feet in height or less, to be increased over the required maximum height of the zoning district in which it is located because the proposed installation meets the following criteria:

- ? The overall height of the building or structure, including antennas, does not exceed sixty (60) feet, or the increase in height does not exceed 35% of the existing building or structure, whichever is less; and
- ? The antenna is architecturally integrated into the building and all ancillary equipment is adequately screened; and
- ? The antenna does not add to the visual clutter of the building or structure.

#### Conformance to Council Policy 6-20, Land Use Policy for Wireless Communication Facilities

The City Council Policy generally discourages wireless communications facilities on residential properties except those developed solely with public utilities, parks or schools. The proposed project will locate three wireless communications antennas and associated equipment on the roof-top of an multi-purpose building at an existing school.

#### *Visual Impacts*

The proposed antennas are enclosed within a cylinder that is mounted in a central location on the roof of an existing multi-purpose building. An existing roof parapet will adequately screen the antennas and the ancillary equipment.

#### *Height*

Antenna installations should conform to the General Plan and Zoning Ordinance height restrictions. The proposed installation conforms to the General Plan Urban Design Policy for maximum height of communication structures. This policy allows a maximum height of 100-feet on sites with non-residential land use designations. The proposed installation will result in an overall height of 39-feet 7-inches. The proposed installation also conforms to the height restrictions set forth in the Zoning Ordinance as described above.

#### *Setbacks from Residential Uses*

The City Council Policy requires that building mounted antennas should be located no closer to a parcel developed for use as a single-family or multi-family residence than 35-feet. The proposed installation would be approximately 280-feet to the nearest residential property line.

#### *Performance Standards*

This project does not include the installation of power-generating equipment. Should the applicant wish to include such equipment in the future a Special Use Permit would be required and the equipment would be required to meet all relevant performance standards, including noise, air quality, and vibration.

#### *Parking*

The project will not have any impact on existing parking for the church use.

## **PUBLIC OUTREACH**

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with interested members of the public.

## **RECOMMENDATION**

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The project site is located on a 9.1-gross-acre parcel in the R-1-8 Residence zoning district.
3. The project site is currently developed with a private school and church.
4. The proposed project consists of the installation a 6-foot tall cylindrical enclosure containing three wireless communication antennas on the roof of an existing church/school building and 242 square foot ancillary equipment shelter.
5. Building-mounted wireless communication antennas are a conditional use in the City's residential zoning districts.
6. The height of the existing building parapet is 33-feet 7-inches.
7. The overall height of the roof mounted antennas is 39-feet 7-inches.
8. The subject Zoning District, R-1-8 Residence, has a height limit of 35-feet.
9. Section 20.80.1900A of the Zoning Ordinance allows the maximum height of wireless communications antenna to be increased over the required maximum height of the zoning district in which it is located up to a maximum of 60-feet.
10. The proposed project is subject to City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.
11. The installation is approximately 280-feet to the nearest residential property line.
12. The proposed project does not include a generator.
13. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the site's designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project substantially complies with the applicable criteria of City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### **CONDITIONS PRECEDENT**

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled, "Most Holy Trinity Church" dated March 9, 2004, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Lighting.** This permit allows no new on-site lighting.
6. **Generators.** This permit does not approve any emergency/back-up generators on site. Any proposed emergency/back-up generators will require subsequent approvals.
7. **Outside Storage.** No outside storage is permitted.
8. **Colors and Materials.** All wireless communications antennas and screening colors and materials are to be those specified on the approved plan set and shall match the existing structure.
9. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, CP04-023, shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
11. **Equipment Removal.** The applicant shall remove the wireless communications antennas, associated equipment and structures from the site at such time as the equipment is no longer in use or should the Conditional Use Permit expire.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
3. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:



- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

#### **NOTICE TO PARTIES**

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.